

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
RUTH WERTHEIM SMITH)

For Appellant: Edgar Raymond Morris
Certified Public Accountant

For Respondent: Bruce W. Walker
Chief Counsel

Jack E. Cordon
Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Ruth Wertheim Smith against a proposed assessment of additional personal income tax in the amount of **\$2,061.90** for the year 1964.

Appeal of Ruth Wertheim Smith

The first question presented for decision is whether respondent properly disallowed the entire amount of a nonbusiness bad debt deduction claimed by appellant for 1964.

In 1944 appellant married Arthur Lyons, a **theatrical** agent and film producer who conducted his business through **his wholly** owned corporation, A. & S. Lyons, Inc. After her marriage appellant loaned substantial sums of money to **A. & S. Lyons, Inc.**, apparently financing Mr. Lyons' **unsuccessful** film productions and his other business endeavors. In 1950 appellant's attorney determined **the** total amount of the loans previously made to the corporation to be **\$282,197.85**. On July 12, 1950, a demand note in that amount was executed by Mr. Lyons as president **of A. & S. Lyons, Inc.** He also personally guaranteed the loans to **the** corporation.

In 1953, appellant divorced Mr. Lyons. **By that** time his corporation **apparently** had permanently ceased active operations and he was without financial resources. At the time of his death in 1964, Mr. Lyons was still without **assets** or any means of support, and neither **he** nor A. & S. Lyons, Inc., had ever repaid any of the money **appellant** had loaned to the corporation. On her 1964 tax return appellant **claimed** the **\$282,197.85** as a nonbusiness bad debt deduction. **The propriety of respondent's denial of that** entire deduction is now before us.

On identical facts, and under substantially similar statutory provisions, the United States Tax Court recently resolved this issue adversely to appellant herein. (Ruth Wertheim Smith, T.C. Memo., Nov. 12, 1975.) The Tax Court concluded that the debt in question, if it ever had value, had become worthless prior **to** 1964. Appellant has not provided us with any evidence which would justify our reaching a different conclusion. For the reasons stated **in** the Tax Court's opinion, therefore, we conclude that respondent properly denied the entire nonbusiness bad debt deduction claimed by appellant for the taxable year 1964.

Appeal of Ruth Wertheim Smith

The second issue is whether respondent properly denied the major portion of a deduction labeled "Investor's Expenses" which appellant claimed in her 1964 return.

Appellant was an investor in stocks, bonds and other securities. For many years she allegedly had maintained an office in New York for the sole purpose of conducting her investment affairs. In her 1964 return appellant deducted a series of expense items which were characterized as having been incurred "relative to the production of income and to the maintenance of property-." The details of the total "Investor's Expenses" deduction are as follows:

Office Furniture Depreciation	\$ 677.17
Bookkeeping Fees and Office Supplies	1,282.60
Secretarial Fees	655.63
Telephone and Telegrams	324.40
Gifts and Promotion	1,322.42
Auditing Fees	1,250.00
Office Rent	805.02
Storage Charges	450.52
Hotels, Subsistence, Travel, and Telephone in connection with business affairs	91232.11
Total	\$15,999.87

Respondent disallowed all but **\$1,250.00** of the **\$15,999.87** claimed as investor's expense on the ground that appellant had failed to demonstrate that the balance of the deduction represented ordinary and necessary expenses within the meaning of section 17252 of the Revenue and Taxation Code.^{1/}

1/ Section 17252 provides:

In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year-

(a) For the production or collection of income:

(b) For the management, conservation, or maintenance of property held for the production of income; or

(c) In connection with the determination, collection, or refund of any tax.

Appeal of Ruth Wertheim Smith

This identical issue was before us in Appeal of Ruth Wertheim Smith, decided by this board on **October 17, 1973**. We there concluded that appellant had failed to carry her burden of proving she was entitled to the bulk of the investor's **expenses** deduction which she claimed for the year 1963. In the instant case respondent wrote several letters to appellant's representative in an attempt to obtain more information regarding the deduction. Respondent received no response to its letters. On the basis of the record before **us**, we must again **conclude** that appellant has not, sustained her burden **of** proving **she** was entitled to the full deduction claimed, despite being given ample opportunity to do so.

For the above reasons, we sustain **respondent's** **action** in this matter.

' O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause **appearing** therefor,

Appeal of Ruth Wertheim Smith

IT IS HEREBY ORDERED, ADJUDGED AND DECREED,
pursuant to section 18595 of the Revenue and Taxation Code,
that the action of the Franchise Tax Board on the protest of
Ruth Wertheim Smith against a proposed assessment of
additional personal income tax in the amount of **\$2,061.90** for
the year 1964, be and the same is hereby sustained.

Done at **Sacramento**, California, this 2nd day of
March, 1977, by the State Board of Equalization.

Stallman L. Burnett, Chairman
Robert J. Smith, Member
Philip H. Lee, Member
_____, Member
_____, Member

ATTEST: *W. W. Sarnap*, Executive Secretary